

## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## 49 CFR Part 1

[Docket No. OST-1999-61891 - 247]

**Organization and Delegation of Powers and Duties; Rescission of Delegation to the Administrator, Federal Highway Administration and Redelegation to Director, Office of Motor Carrier Safety**

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

**SUMMARY:** The Secretary of Transportation (Secretary) rescinds the currently delegated authority of the Federal Highway Administrator to perform motor carrier safety functions and operations and redelegates it to the Director of a new Office of Motor Carrier Safety in the Department of Transportation. This action enables the Department to continue most of the activities performed by the Federal Highway Administration's Office of Motor Carrier Safety consistently with section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act.

**EFFECTIVE DATE:** This rule is effective on October 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590; or Ms. Gwyneth Radloff, Office of the General Counsel, (202) 366-93 19, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

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**Background**

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act (Public Law 106-69) prohibits the Federal Highway Administration (FHWA) from spending funds to carry out the functions and operations of its Office of Motor Carriers (OMC). The legislation provides that, if the Secretary delegates those functions and operations outside of the FHWA, the funds shall also be transferred. Accordingly, the Secretary is rescinding the current delegation of his authority to the Federal Highway Administrator in 49 CFR 1.48 (h), (i), (p), (u), (v), (w), (z), (aa), (hh), (ii), and (jj) to carry out motor carrier functions and operations and gives notice that the Director of a new Office of Motor Carrier Safety in the Department of Transportation will exercise those functions and operations to the full extent permitted by section 338. This rule amends 49 CFR 1.4 and adds a new § 1.73 to reflect the Secretary's redelegation of these motor carrier functions to the new Office of Motor Carrier Safety.

Duties and powers related to motor carrier safety, vested in the Secretary by chapter 5 and 315 of title 49, U.S.C., are specifically delegated by statute to the Federal Highway Administrator by 49 U.S.C. 104(c) (2) and cannot be exercised or transferred by the Secretary without legislative approval. However, the second proviso of section 338 states that "notwithstanding section 104 (c) (2) of title 49, United States Code, the Federal Highway Administrator shall not carry out the duties and functions vested in the Secretary under 49 U.S.C. 52 1 (b) (5)." Because 49 U.S.C. 52 1 specifically authorizes "the Secretary" to take enforcement action, 49 U.S.C. 104 (c) (2) is merely a limitation on the Secretary's power to transfer that authority. Section 338 now prohibits the Federal Highway Administrator from carrying out the imminent hazard authority of 49 U.S.C. 52 1 (b) (5), so the general authority of the Secretary to implement that subsection is restored and may be redelegated. Accordingly, authority to carry out section 52 1 (b) (5) is redelegated by this rule to the director of the new Office of Motor Carrier Safety. It is the only function from chapters 5 or 315 of title 49, United States Code, that is subject to this delegation. Although civil penalty actions are prohibited, the Secretary has authority to take other enforcement actions, such as issuing roadside out-of-service orders under 49 CFR 396.9(c) or 395.13 (a) and (b) and imminent hazard

orders under section 52 1 (b) (5) of title 49, United States Code.

This rule is being published as a final rule and made effective on the date signed by the Secretary of Transportation. As the rule relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). In addition, the functions addressed in this rule had to be transferred immediately in order that the Department's motor carrier safety program could continue to the extent permitted by section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act. For this reason, the Secretary for good cause finds, under 5 U.S.C. 553(d)(3), to make this rule effective in less than 30 days after publication.

**List of Subjects in 49 CFR Part 1**

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of title 49, Code of Federal Regulations, is amended as follows:

**PART I-[AMENDED]**

1. The authority citation for Part 1 is revised to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 371 1(a)(2); Pub. L. 101-552, 104 Stat. 2736; Pub. L. 106-69, 113 Stat. 1022.

**§ 1.4 [Amended]**

2. In § 1.4, remove paragraph (d) (5) and redesignate paragraph (d) (6) as new paragraph (d) (5).

**§ 1.48 [Amended]**

3. In § 1.48, remove and reserve paragraphs (h), (i), (p), (u), (v), (w), (z), (aa), (hh), (ii), and (ii).

4. Add § 1.73 to read as follows:

**§ 1.73 Delegation to the Director of the Office of Motor Carrier Safety.**

The Director of the Office of Motor Carrier Safety is delegated authority to:

(a) Carry out the functions and exercise the authority vested in the Secretary by 49 U.S.C., Subtitle IV, part B:

- (1) Chapter 131, relating to general provisions on transportation policy;
- (2) Chapter 133, relating to administrative provisions;
- (3) Chapter 135, relating to jurisdiction;

(4) Chapter 137, sections 13702(a), 13702(c)(1), 13702(c)(2), 13702(c)(3), 13704, 13707, and 13708, relating to rates, routes, and services;

(5) Chapter 139, relating to registration and financial responsibility requirements;

(6) Chapter 141, subchapter I and sections 14121 and 14122 of subchapter II, relating to operations of motor carriers;

(7) Chapter 145, sections 14501, 14502, and 14504, relating to Federal-State relations;

(8) Chapter 147, sections 14701 through 14708, relating to enforcement remedies, investigations, and motor carrier liability; and

(9) Chapter 149, sections 14901 through 14913, relating to civil and criminal penalties for violations of 49 U.S.C., Subtitle IV, part B.

(b) Carry out the functions and exercise the authority vested in the Secretary by sections 104, 403(a), and 408 of the ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803, relating to miscellaneous motor carrier provisions, railroad-highway grade crossing regulation and fatigue-related issues pertaining to commercial motor vehicle safety.

(c) Carry out the functions vested in the Secretary by 42 U.S.C. 4917 relating to procedures for the inspection, surveillance and measurement of commercial motor vehicles for compliance with interstate motor carrier noise emission standards and related enforcement activities including the promulgation of necessary regulations.

(d) (1) Carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), and (c), 5122(a) and (b), 5123, and 5124, relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by highway.

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5112 relating to highway routing of hazardous materials; 5109 relating to motor carrier safety permits, except subsection (f); 5125(a) and (c)-(f), relating to preemption determinations or waivers of preemption of hazardous materials highway routing requirements; 5105 (e) relating to inspections of motor vehicles carrying hazardous material; 5119 relating to uniform forms and procedures; and 5127(f) and (g) relating to credits to appropriations and availability of amounts.

(e) Carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 relating to commercial motor vehicle operators.

(f) Carry out the functions vested in the Secretary by 49 U.S.C. 13906, 31138

and 31139 relating to financial responsibility requirements for motor carriers, brokers, and freight forwarders.

(g) Carry out the functions vested in the Secretary by subchapters I and III of chapter 311, title 49, U.S.C., relating to commercial motor vehicle programs and safety regulation.

(h) Carry out the functions vested in the Secretary by 49 U.S.C. 5708 relating to food transportation inspections; 5710 relating to the Secretary's powers to administer the sanitary food transportation regulations; 5711 relating to enforcement of sanitary food transportation regulations and applicable penalties; 5712 and 5714 relating to Federal-State relations; and 5113 and 31144 relating to safety fitness of owners and operators.

(i) Carry out the functions vested in the Secretary by 49 U.S.C. 5118 relating to the use of inspectors to promote safety in the highway transportation of radioactive material; and 49 U.S.C. 31142 (f) relating to application of State regulations to government-leased vehicles and operators.

(j) Carry out the functions vested in the Secretary by 49 U.S.C. 521 (b) (5) relating to operations that pose an imminent hazard to safety.

(k) Carry out the functions and exercise the authority delegated to the Secretary in section 2(d) (2) of Executive Order 12777 (3 CFR, 1992 Comp., p. 351), with respect to highway transportation, relating to the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of motor carriers, subject to the Federal Water Pollution Control Act (33 U.S.C. 1321), to operate without approved response plans, except as delegated in 49 CFR 1.46(m).

Issued in Washington, DC, on October 9, 1999.

Rodney E. Slater,

*Secretary of Transportation.*

#### Appendix to Preamble-Possible Congressional Action

There is a possibility of further Congressional action regarding motor carrier functions and operations. If any subsequent law is enacted, the redelegation will be amended accordingly and published in the Federal Register as soon as practicable.

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